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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

AV SIKH CENTER et al.,

Plaintiffs and Appellants,

v.

ANTELOPE VALLEY SIKH
CENTER et al.,

Defendants and Respondents.

B289045

(Los Angeles County
Super. Ct. No. BC494702)

APPEAL from an order of the Superior Court of
Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed.

Law Offices of Michael D. Kwasigroch and Michael D.
Kwasigroch for Plaintiffs and Appellants.

Landau & Landau and Bruce G. Landau for Defendants
and Respondents.

INTRODUCTION

Appellants challenge the trial court's order striking their memorandum of costs as untimely. We conclude the trial court acted within its broad discretion in striking the memorandum and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

Appellants were the prevailing parties in the trial court. The clerk of court served notice of entry of judgment on appellants' counsel on June 1, 2017. On November 28, 2017, appellants filed a memorandum of costs under Code of Civil Procedure sections 1032 and 1033.5.¹ California Rules of Court, rule 3.1700(a)(1),² sets the deadline for filing a memorandum of costs: within 15 days after the date of service of notice of entry of judgment or within 180 days after entry of judgment, whichever is first.

On December 7, 2017, respondents filed a motion to strike the memorandum of costs as untimely because it was not filed by June 16, 2017, that is, within 15 days of service of notice of entry of judgment.

Appellants opposed the motion, arguing that "[p]roper notice of entry of judgment was never served" because "it was served to the wrong address. Counsel for the prevailing parties never received notice of entry of judgment because of this defect

¹ All further statutory references are to the Code of Civil Procedure.

² All further rule references are to the California Rules of Court.

in service, and the fact he had moved over two years prior to the entry of judgment. Proper notice of change of address was served on all parties and filed with the court . . .” Appellants argued they only knew about entry of judgment as a result of their counsel “checking the Internet regularly and seeing the judgment when it was posted. The cost bills were therefore timely filed . . . 180 days after the date of entry.” At the hearing on the motion to strike, appellants reiterated that their counsel checked the internet “*daily* after the last appearance” in the trial court. (Italics added.)

More than two years earlier, appellants’ counsel had in fact filed a notice of change of address of his law office from 1445 East Los Angeles Avenue, Suite 301P, Simi Valley, California 93065 (East L.A. Ave. address) to 1975 Royal Avenue, Suite 4, Simi Valley, California 93065. Nevertheless, appellants’ counsel continued thereafter to file and serve pleadings and discovery bearing the East L.A. Ave. address. At one point, counsel brought the inconsistency to the court’s attention: he notified the court on December 15, 2015, that he “erroneously submitted pleadings with the wrong address for his office” in the caption as a result of “cop[ying] prior formatted pleadings.” Yet, even after December of 2015 and up through trial, appellants’ counsel persistently filed and served pleadings listing his office at the East L.A. Ave. address.

When the court rendered the tentative verdict on January 12, 2017, it ordered the “[p]revailing party to submit a proposed judgment by” January 31, 2017. The clerk of court served the tentative verdict by regular mail on January 12, 2017 on appellants’ counsel at the East L.A. Ave. address. A month later, on February 14, 2017, appellants’ counsel filed a declaration

confirming that the court had served notice of its tentative verdict on January 12, 2017 “by regular mail.” The caption of the declaration itself bore the East L.A. Ave. address. The proof of service attached to the declaration, signed by counsel under penalty of perjury, states: “I hereby declare that I am employed in the County of Ventura, State of California. I am over the age of 18, and not a party to the within action. *My business address is 1445 E. Los Angeles Avenue, Suite 301P, Simi Valley, California 93065.*” (Italics added.)

When it came time to serve the notice of entry of judgment, the clerk served it on the East L.A. Ave. address.

The trial court granted respondents’ motion to strike “as to all filed cost bills,” stating “there was not compliance” with rule 3.1700(a) and (b), because appellants’ cost bills were filed five months after entry of judgment.

This appeal followed.

DISCUSSION

A. *Standard of Review and Applicable Law*

“The trial court’s exercise of discretion in granting or denying a motion to tax [and/or strike] costs will not be disturbed if substantial evidence supports its decision.’ [Citation.] To the extent the statute grants the court discretion in allowing or denying costs or in determining amounts, we reverse only if there has been a ‘ “clear abuse of discretion” and a “miscarriage of justice.” ’ [Citation.]” (*Chaaban v. Wet Seal, Inc.* (2012), 203 Cal.App.4th 49, 52.)

As a general rule, a prevailing party to an action is “entitled as a matter of right to recover costs” (§ 1032, subd. (b).) “A prevailing party who claims costs must serve and

file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment . . . by the clerk under . . . section 664.5 or the date of service of written notice of entry of judgment . . . , or within 180 days after entry of judgment, whichever is first.” (Rule 3.1700(a)(1).) The parties may agree to extend these filing deadlines, or “[i]n the absence of an agreement, the court may extend the times for serving and filing the cost memorandum . . . for a period not to exceed 30 days.” (*Id.*, (b)(3).) “The time provisions relating to the filing of a memorandum of costs, while not jurisdictional, are mandatory.” (*Hydratec, Inc. v. Sun Valley 260 Orchard & Vineyard Co.* (1990) 223 Cal.App.3d 924, 929.) If the prevailing party fails to present a cost bill, “a waiver of the right to costs results.” (*Ibid.*)

Section 1013, subdivision (a)—which sets forth the requirements for service by mail—provides that the notice must be mailed “in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, *at the office address as last given by that person on any document filed in the cause* and served on the party making service by mail.” (Italics added.) This subdivision applies to mailings by the court clerk. (*Lee v. Placer Title Co.* (1994) 28 Cal.App.4th 503, 508.)

B. *The Trial Court Did Not Abuse Its Discretion.*

Appellants contend the trial court should not have stricken their memorandum of costs as untimely because it was filed on the 180th day from June 1, 2017, that is, on November 28, 2017. They repeat the same argument they raised in opposition to the motion to strike—that they only learned about entry of judgment because their counsel checked the case summary online. Because they did not receive notice of entry of judgment, they believe the 180-day deadline applies to them.

We are not persuaded. If appellants' counsel had been checking the internet *daily* as represented to the court, appellants would have seen the court's June 1, 2017 notice of entry of judgment shortly after it was served, not five months later.³ More significantly, a review of the case summary reflects the pleading most recently filed by appellants before service of the notice of entry of judgment was, in fact, their counsel's February 14, 2017 declaration bearing the East L.A. Ave. address. Thus, the clerk did not err in serving the notice of entry of judgment on appellants at the East L.A. Ave. address, notwithstanding the two-year-old change of address notice. Nor did the court abuse its discretion under these circumstances in declining to credit appellants' assertions and striking the memorandum of costs as untimely.

³ On our own motion, we take judicial notice of the case summary of the underlying Los Angeles Superior Court case No. BC494702. (Evid. Code, §§ 452, 459.)

DISPOSITION

The order striking appellants' memorandum of costs is affirmed. Respondents are awarded costs on appeal.

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STRATTON, J.

We concur:

BIGELOW, P. J.

GRIMES, J.